

REFERENCE TITLE: **homeowners' associations; document amendments**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2434

Introduced by
Representatives Reagan, Campbell CH: Campbell CL, Crandall, Hendrix,
Kavanagh, Senator Harper

AN ACT

AMENDING SECTION 33-1227, ARIZONA REVISED STATUTES; AMENDING TITLE 33,
CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1817;
RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1227, Arizona Revised Statutes, is amended to
3 read:

4 33-1227. Amendment of declaration

5 A. Except in cases of amendments that may be executed by a declarant
6 under section 33-1220, by the association under section 33-1206 or section
7 33-1216, subsection D, or by certain unit owners under section 33-1218,
8 subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection
9 B, and except to the extent permitted or required by other provisions of this
10 chapter, the declaration, including the plat, ~~may be amended only by a vote~~
~~of the unit owners to which at least sixty-seven per cent of the votes in the~~
~~association are allocated, or any larger majority the declaration~~
~~specifies. The declaration may specify a smaller percentage only if all of~~
~~the units are restricted exclusively to nonresidential use. The declaration~~
~~may also provide that the consent of the declarant is required to an~~
~~amendment during any period of declarant control pursuant to section~~
~~33-1243. Within thirty days after the adoption of any amendment pursuant to~~
~~this subsection, the association shall prepare, execute and record a written~~
~~instrument setting forth the amendment~~ MAY BE AMENDED PURSUANT TO ANY
20 PROCEDURE IN THE DECLARATION. IN ADDITION TO ANY AMENDMENT RIGHTS IN THE
21 DECLARATION, AND AFTER THE PERIOD OF DECLARANT CONTROL AND NOTWITHSTANDING
22 ANY PROVISION IN THE DECLARATION TO THE CONTRARY, THE DECLARATION, INCLUDING
23 THE PLAT, MAY BE AMENDED BY THE UNIT OWNERS AT ANY TIME BY A VOTE OF AT LEAST
24 TWO-THIRDS OF THOSE VOTING ON THE MEASURE, EXCEPT THAT IF THE DECLARATION
25 PROVIDES FOR A SMALLER PERCENTAGE THAT IS AT LEAST FIFTY PER CENT OF THOSE
26 VOTING, THE SMALLER PERCENTAGE APPLIES.

27 B. FOR ANY MEETING OF THE ASSOCIATION AT WHICH THE UNIT OWNERS ARE
28 VOTING ON A PROPOSED AMENDMENT TO THE DECLARATION, THE FOLLOWING APPLY:

29 1. THE ASSOCIATION SHALL DELIVER TO THE UNIT OWNERS, AT LEAST THIRTY
30 BUT NOT MORE THAN SIXTY DAYS BEFORE THE MEETING, WRITTEN NOTICE OF ANY
31 MEETING CALLED FOR THE PURPOSE OF AMENDING THE DECLARATION AND THE TEXT OF
32 ANY PROPOSED AMENDMENT.

33 2. ANY AMENDMENT TO THE DECLARATION THAT IS ADOPTED BY THE ASSOCIATION
34 IS EFFECTIVE ON RECORDING.

35 3. DOCUMENTS RELATING TO ANY ADOPTED AMENDMENT SHALL BE KEPT WITH THE
36 OTHER BOOKS AND RECORDS OF THE ASSOCIATION FOR AT LEAST ONE YEAR AFTER
37 RECORDING OF THE AMENDMENT.

38 4. A QUORUM IS PRESENT FOR PURPOSES OF VOTING ON AMENDMENTS TO THE
39 DECLARATION IF UNIT OWNERS HOLDING AT LEAST THIRTY PER CENT OF THE VOTES IN
40 THE ASSOCIATION ARE PRESENT IN PERSON OR AS OTHERWISE PERMITTED BY LAW.

41 C. IF AT LEAST TWO-THIRDS OF THOSE PERSONS VOTING ON THE AMENDMENT
42 APPROVE THE AMENDMENT, THE PROPOSED PROVISION OF THE DECLARATION IS APPROVED
43 AND SHALL THEREAFTER BE APPLICABLE AS IF ADOPTED BY THE BOARD OF DIRECTORS.

1 ~~B.~~ D. An action to challenge the validity of an amendment adopted by
2 the association pursuant to this section shall not be brought more than one
3 year after the amendment is recorded.

4 ~~C.~~ E. An amendment to the declaration shall be recorded in each
5 county in which any portion of the condominium is located and is effective
6 only on recordation in the same manner as required for the declaration under
7 section 33-1211.

8 ~~D.~~ F. Except to the extent expressly permitted or required by other
9 provisions of this chapter, an amendment shall not create or increase special
10 declarant rights, increase the number of units or change the boundaries of
11 any unit, ~~OR the allocated interests of a unit or the uses to which any unit~~
~~is restricted~~, in the absence of unanimous consent of the unit owners.

12 ~~E.~~ G. An amendment shall not terminate or decrease any unexpired
13 development right, special declarant right or period of declarant control
14 unless the declarant approves.

15 ~~F.~~ H. Amendments to the declaration required by this chapter to be
16 executed by the association shall be executed on behalf of the association by
17 any officer of the association designated for that purpose or, in the absence
18 of designation, by the president of the association.

19 Sec. 2. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
20 amended by adding section 33-1817, to read:

21 33-1817. Amendments to community documents; quorum; limitations

22 A. THE DECLARATION, INCLUDING THE PLAT, MAY BE AMENDED PURSUANT TO ANY
23 PROCEDURE IN THE DECLARATION. IN ADDITION TO ANY AMENDMENT RIGHTS IN THE
24 DECLARATION, AND AFTER A MAJORITY OF THE BOARD IS COMPRISED OF NONDECLARANT
25 MEMBERS AND NOTWITHSTANDING ANY PROVISION IN THE DECLARATION TO THE CONTRARY,
26 THE DECLARATION, INCLUDING THE PLAT, MAY BE AMENDED AT ANY TIME BY THE
27 MEMBERS BY A VOTE OF AT LEAST TWO-THIRDS OF THOSE VOTING ON THE AMENDMENT,
28 EXCEPT THAT IF THE DECLARATION PROVIDES FOR A SMALLER PERCENTAGE THAT IS AT
29 LEAST FIFTY PER CENT OF THOSE VOTING, THE SMALLER PERCENTAGE APPLIES.

30 B. FOR ANY MEETING OF THE ASSOCIATION AT WHICH THE MEMBERS ARE VOTING
31 ON A PROPOSED AMENDMENT TO THE DECLARATION, THE FOLLOWING APPLY:

32 1. THE ASSOCIATION SHALL DELIVER TO THE MEMBERS, AT LEAST THIRTY BUT
33 NOT MORE THAN SIXTY DAYS BEFORE THE MEETING, WRITTEN NOTICE OF ANY MEETING
34 CALLED FOR THE PURPOSE OF AMENDING THE DECLARATION AND THE TEXT OF ANY
35 PROPOSED AMENDMENT.

36 2. ANY AMENDMENT TO THE DECLARATION THAT IS ADOPTED BY THE ASSOCIATION
37 IS EFFECTIVE ON RECORDING.

38 3. DOCUMENTS RELATING TO ANY ADOPTED AMENDMENT SHALL BE KEPT WITH THE
39 OTHER BOOKS AND RECORDS OF THE ASSOCIATION FOR AT LEAST ONE YEAR AFTER
40 RECORDING OF THE AMENDMENT.

41 4. A QUORUM IS PRESENT FOR PURPOSES OF VOTING ON AMENDMENTS TO THE
42 DECLARATION IF MEMBERS HOLDING AT LEAST THIRTY PER CENT OF THE VOTES IN THE
43 ASSOCIATION ARE PRESENT IN PERSON OR AS OTHERWISE PERMITTED BY LAW.

1 C. IF AT LEAST TWO-THIRDS OF THOSE PERSONS VOTING ON THE AMENDMENT
2 APPROVE THE AMENDMENT, THE PROPOSED PROVISION OF THE DECLARATION IS APPROVED
3 AND SHALL THEREAFTER BE APPLICABLE AS IF ADOPTED BY THE BOARD OF DIRECTORS.

4 D. AN ACTION TO CHALLENGE THE VALIDITY OF AN AMENDMENT ADOPTED BY THE
5 ASSOCIATION PURSUANT TO THIS SECTION SHALL NOT BE BROUGHT MORE THAN ONE YEAR
6 AFTER THE AMENDMENT IS RECORDED.

7 E. AN AMENDMENT TO THE DECLARATION SHALL BE RECORDED IN EACH COUNTY IN
8 WHICH ANY PORTION OF THE PLANNED COMMUNITY IS LOCATED AND IS EFFECTIVE ONLY
9 ON RECORDATION.

10 F. AN AMENDMENT SHALL NOT TERMINATE OR DECREASE ANY UNEXPIRED
11 DEVELOPMENT RIGHT, SPECIAL DECLARANT RIGHT OR PERIOD OF DECLARANT CONTROL
12 UNLESS THE DECLARANT APPROVES.

13 G. AMENDMENTS TO THE DECLARATION REQUIRED BY THIS CHAPTER TO BE
14 EXECUTED BY THE ASSOCIATION SHALL BE EXECUTED ON BEHALF OF THE ASSOCIATION BY
15 ANY OFFICER OF THE ASSOCIATION DESIGNATED FOR THAT PURPOSE OR, IN THE ABSENCE
16 OF DESIGNATION, BY THE PRESIDENT OF THE ASSOCIATION.